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**Attorneys for Defendant Keurig Dr Pepper, Inc.**

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

**SACCANI DISTRIBUTING COMPANY,**  
**a California corporation,**

**Plaintiff,**

**v.**

**KEURIG DR PEPPER, INC., a Delaware**  
**corporation; and DOES 1 through 20,**  
**inclusive,**

**Defendants.**

**Case No.**

**DEFENDANT KEURIG DR PEPPER,**  
**INC.'S FEDERAL REMOVAL**

COMPLAINT FILED: 02/04/2020

SACRAMENTO COUNTY SUPERIOR  
COURT, CASE NO. 34-2020-00274782

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

<sup>1</sup> Ms. Clark and Mr. Illmer are currently in the process of preparing and filing Applications to Appear *Pro Hac Vice* in this matter.

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, defendant Keurig Dr Pepper, Inc. (“KDP”), hereby removes the case styled *Saccani Distributing Company, v. Keurig Dr Pepper, Inc., and DOES 1 through 20, inclusive*, Case No.34-2020-00274782, filed in The Superior Court of State of California, County of Sacramento (“State Court Action”). As grounds for removal, KDP respectfully states the following:

**I. THE STATE COURT ACTION.**

1. On February 4, 2020, Plaintiff Saccani Distributing Company (“Saccani”) initiated the State court Action by filing its Complaint for Damages and Other Relief (“Complaint”) in The Superior Court of the State of California, County of Sacramento. Exhibit B(2).

2. On February 4, 2020, Saccani filed its Civil Case Cover Sheet. Exhibit B(3).

3. On February 4, 2020, the Clerk of Court issued a Summons directed to KDP. Exhibit B(4).

4. On February 4, 2020, the Clerk of Court issued a Notice of Case Management Conference and Order. Exhibit B(5).

5. The Clerk also issued an Alternative Dispute Resolution Information Package. Exhibit B(6).

6. On March 17, 2020, KDP was served via Notice and Acknowledgment of Receipt. Exhibit B(7). To date, the Officer’s Return of Summons to KDP has not been filed with the Clerk of The Superior Court.

7. No further proceedings have taken place in the State Court Action.

**II. REQUIREMENTS FOR REMOVAL.**

8. In accordance with 28 U.S.C. § 1446(a), KDP attaches the following to its Notice of Removal:

Exhibit A: Index of all matters filed in the State Court Action that clearly identifies each document and indicates the date the document was filed.

1 Exhibit B: Copies of all process and pleadings in the State Court Action,  
2 individually tabbed and arranged in order of filing under tabs 1  
through 8.

3 Exhibit C: August 7, 2019 Demand Letter

4 9. As stated herein, Plaintiff filed the State Court Action on February 4, 2020. KDP  
5 was served on March 17, 2020. *See* Exhibit B(7). Consequently, this Notice of Removal is  
6 timely filed pursuant to 28 U.S.C. § 1446(b).

7 10. As set forth in more detail below, this Court would have original jurisdiction of  
8 this matter based on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Except as otherwise  
9 expressly provided by Act of Congress, any civil action brought in a state court of which the  
10 district courts of the United States have original jurisdiction may be removed to the district court  
11 of the United States for the district and division embracing the place where the action is pending.  
12 *See* 28 U.S.C. § 1441. The Eastern District of California is the United States District embracing  
13 Sacramento County, California, the county in which the State Court Action is pending. *See* 28  
14 U.S.C. § 84(b).

15 11. As required by 28 U.S.C. § 1446(d), KDP, the removing parties, will promptly  
16 give all parties written notice of the filing of this Notice of Removal and will promptly file a  
17 copy of this Notice of Removal with the Clerk of The Superior Court of Sacramento County,  
18 California, where the State Court Action is currently pending.

19 **III. THIS COURT HAS JURISDICTION BASED ON DIVERSITY OF CITIZENSHIP.**

20 12. The district courts of the United States have original jurisdiction over this action  
21 because there is complete diversity of citizenship between the parties and the matter in  
22 controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs. 28 U.S.C. §  
23 1332(a).

24 **A. There is complete diversity of citizenship between the Parties.**

25 13. Plaintiff is a California corporation with its principal place of business located at  
26 2600 5<sup>th</sup> Street, Sacramento, California 95818. (*See* Exhibit B(2) ¶ 1).

1           14.     KDP is a Delaware Corporation with its principal place of business in Plano,  
2 Texas. Therefore, KDP is a citizen of Texas for diversity purposes.

3           15.     The Court should disregard Defendants named under the fictitious names DOES 1  
4 – 20 for purposes of determining whether complete diversity exists. *See* 28 U.S.C. § 1441(b)  
5 ("the citizenship of defendants sued under fictitious names shall be disregarded").

6           16.     At the time the State Court Action was commenced, and at the time of Removal,  
7 KDP was, and currently remains, diverse in citizenship from the Plaintiff.  
8 28 U.S.C. § 1332(a)(1). Accordingly, there is complete diversity among the parties.

9           **B.     The amount in controversy exceeds \$75,000.00 exclusive of interest and costs.**

10          17.     When the plaintiff's state court petition does not allege the specific amount of  
11 damages, as in the instant case, a court may determine that removal is proper if it is facially  
12 apparent from the petition that the claims are likely above \$75,000.00. *Singer v. State Farm*  
13 *Mutual Automobile Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (citing *Allen v. R & H Oil & Gas*  
14 *Company*, 63 F.3d 1326, 1335 (5th Cir. 1995)); *see also Fritsch v. Swift Transportation Co. of*  
15 *Arizona, LLC*, 899 F. 3d 785 (9th Cir. 2018) (to determine the amount in controversy, the court  
16 may consider actual damages, exemplary damages, costs of complying with an injunction, and  
17 attorneys' fees). If the amount in controversy is not apparent from the face of the petition, the  
18 court may rely on facts asserted in the removal notice that support a finding of the requisite  
19 amount. *Singer*, 116 F.3d at 377. The jurisdictional facts supporting removal must be judged at  
20 the time of the removal. *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414-15 (9th Cir.  
21 2018).

22          18.     "If removal of a civil action is sought on the basis of the jurisdiction conferred by  
23 section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the  
24 amount in controversy, except that – (A) the notice of removal may assert the amount in  
25 controversy if the initial pleading seeks – (i) nonmonetary relief; or (ii) a money judgment, but  
26 the State practice either does not permit demand for a specific sum or permits recovery of  
27 damages in excess of the amount demanded; and (B) removal of the action is proper on the basis  
28

1 of an amount in controversy asserted under subparagraph (A) if the district court finds, by the  
2 preponderance of the evidence, that the amount in controversy exceeds the amount specified in  
3 section 1332(a).” 28 U.S.C. § 1446(c)(2). That is, if no amount of damages has been alleged in  
4 the state court petition, the defendant must prove by a preponderance of the evidence that the  
5 amount in controversy exceeds the jurisdictional minimum. *Singer*, 116 F.3d at 377; *see also*,  
6 *Rodriguez v. AT&T Mobility Services LLC*, 728 F.3d 975, 981-82 (9th Cir. 2013). This  
7 requirement can be satisfied if the defendant shows that “it is ‘facially apparent’ from the  
8 complaint that the jurisdictional amount is in controversy. If not, the court may consider facts in  
9 the removal petition, and may ‘require parties to submit summary-judgment-type evidence  
10 relevant to the amount in controversy at the time of removal.” *Singer*, 116 F.3d at 377 (quoting  
11 *Allen*, 63 F.3d at 1335-36); *see also Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir.  
12 1997). To satisfy its burden, the removing party’s burden is not to show the amount that plaintiff  
13 will ultimately recover; rather, it only need show the amount that will be at issue in the dispute.  
14 *Lewis v. Verizon Communications, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (“The amount in  
15 controversy is not proof of the amount the plaintiff will recover. Rather, it is an estimate of the  
16 amount that will be put at issue in the course of the litigation.”) (quoting *McPhail v. Deere &*  
17 *Co.*, 529 F.3d 947, 956 (10th Cir. 2008)).

18 19. By letter dated August 7, 2019, counsel for Plaintiff demanded KDP pay Plaintiff  
19 \$201,260 for “...just and fair compensation...of liquidated damages and repurchase of  
20 inventory.” Exhibit C, p. 2. Plaintiff’s complaint specifically requests “...liquidated damages  
21 and an amount necessary to repurchase inventory plus laid in costs...” in addition to  
22 compensatory damages, economic damages, consequential damages, restitution, prejudgment  
23 interest, reasonable attorneys’ fees and costs. Exhibit B(2), ¶¶ 18, 22, 29, 32, 40 and Prayer 1-7.

24 20. Considering the Plaintiff demanded \$201,260 in August 2019 (Exhibit C), and the  
25 Plaintiff seeks additional damages in the complaint, the preponderance of the evidence shows  
26 that it is more likely than not that the amount in controversy exceeds \$75,000.00.

1  
2 **IV. CONCLUSION**

3 21. Because there is complete diversity amongst the parties and the amount in  
4 controversy exceeds \$75,000.00, diversity jurisdiction exists and this Court has subject matter  
5 jurisdiction over the case.

6 **V. PRAYER**

7 WHEREFORE, pursuant to 28 U.S.C. §§ 1332 (a)(1), 1441 and 1446 and in conformance  
8 with the requirements set forth in 28 U.S.C. § 1446, Defendant hereby removes the case styled  
9 *Saccani Distributing Company, v. Keurig Dr Pepper, Inc., and DOES 1 through 20, inclusive*,  
10 Case No.34-2020-00274782, filed in The Superior Court of State of California, County of  
11 Sacramento, so that this Court may assume jurisdiction over the cause as provided by law. By  
12 filing this Notice of Removal, KDP does not consent to personal jurisdiction and files this Notice  
13 of Removal without prejudice to its right to assert that KDP lacks sufficient minimum contacts  
14 with the State of California to establish personal jurisdiction.

15  
16 Dated: April 16, 2020

17  
18 By: /s/ Nicholas P. Carrigan  
19 Nicholas P. Carrigan  
20 (CA Bar No. 249584)  
James G. Bohm  
(CA Bar No. 132430)

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25 **Attorneys for Defendant Keurig Dr Pepper, Inc.**  
26  
27  
28

**HUSCH BLACKWELL LLP**

By: /s/ Richard A. Illmer  
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**Counsel for Keurig Dr Pepper, Inc.**

**CERTIFICATE OF SERVICE**

I, Lance Li, declare as follows:

I am over the age of 18 and not a party to this cause. I am employed in the county where the mailing occurred. My business address is 695 Town Center Drive, Ste. 700, Costa Mesa, CA 92626, which is located in the county where the mailing described below took place.

On 04/16/2020, I served the document(s) described as: **DEFENDANT KEURIG DR PEPPER, INC.'S FEDERAL REMOVAL** on all interested parties in this action by placing a true and correct copy thereof in a sealed envelope, with first-class postage prepaid thereon, and deposited said envelope in the United States mail at or in Costa Mesa, California, addressed to:

Moncia Hans Folsom  
Kristin N. Ivanco  
Delfino Madden O'Malley Coyle & Koewler LLP  
500 Capitol Mall, Suite 1500  
Sacramento, California 95814

I declare under penalty of perjury that the foregoing is true and correct. Executed on 04/16/2020 at Costa Mesa, California.

/s/ Lance Li  
Lance Li



## **EXHIBIT A**

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**Attorneys for Defendant Keurig Dr Pepper, Inc.**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**SACCANI DISTRIBUTING COMPANY,  
a California corporation,**

**Plaintiff,**

**v.**

**KEURIG DR PEPPER, INC., a Delaware  
corporation; and DOES 1 through 20,  
inclusive,**

**Defendants.**

**Case No.**

**DEFENDANT KEURIG DR PEPPER,  
INC.'S INDEX OF MATTERS FILED**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendant Keurig Dr Pepper, Inc. ("KDP"), Petition for Removal, and makes and files this its Index of Matters Filed as follows:

The documents filed concurrently with this index include:

<sup>1</sup> Ms. Clark and Mr. Illmer are currently in the process of preparing and filing Applications to Appear *Pro Hac Vice* in this matter.

- B1. Docket sheet of The Superior Court of Sacramento County, California
- B2. February 4, 2020 Complaint filed by Plaintiff Saccani Distributing Company.
- B3. February 4, 2020 Civil Case Cover Sheet.
- B4. February 4, 2020 Summons
- B5. February 4, 2020 Notice of Case Management Conference and Order
- B6. Alternative Dispute Resolution Information Package
- B7. March 17, 2020 Notice and Acknowledgement of Receipt

## **EXHIBIT B**

**EXHIBIT B1**

## Civil Case Details

### Case Information

**Case Title**

Saccani Distributing Company vs. Keurig Dr. Pepper Inc., a Delaware Corporation

**Case Number**

34-2020-00274782-CU-BC-GDS

**Case Type**

Breach of Contract/Warranty

**Filing Date**

02/04/2020

**Case Category**

Civil - Unlimited

### Participants

Participant Name	Role	Represented By
Does 1-20	Defendant	
Keurig Dr. Pepper Inc., a Delaware Corporation	Defendant	
Saccani Distributing Company	Plaintiff	Monica S Hans

### Scheduled Hearings

Event Date	Event Time	Event Type	Department	Status
08/06/2020	8:30 AM	Case Management Conference - Case Management Program	31	Scheduled

### Register of Actions

## Case 2:20-cv-00786-JAM-EFB Document 1 Filed 04/16/20 Page 15 of 60

Click the Preview button to see a preview of the document. Previewed documents contain every other page, up to a maximum of five pages. To purchase a full version containing all pages, check the checkbox for the document(s) you want and then click the Document Cart link at the top of the page to review your cart / check out.

ROA#	ROA Entry	Filed Date	Filed By	Pages
6	Case Management Conference - Case Management Program scheduled for 08/06/2020 at 08:30:00 AM in Department 31 at Gordon D Schaber Courthouse and the Notice of Case Management Conference and Order to Appear has been generated .	02/05/2020		2
5	Case assigned to Department 31 .	02/04/2020		
4	Summons for 30-Day Summons was issued during case initiation on 02/05/2020 .	02/05/2020		
3	Civil Case Cover Sheet filed.	02/04/2020	Saccani Distributing Company (Plaintiff)	3
2	Summons filed.	02/04/2020	Saccani Distributing Company (Plaintiff)	2
1	Complaint filed.	02/04/2020	Saccani Distributing Company (Plaintiff)	9

**EXHIBIT B2**



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11 Attorneys for Plaintiff  
12 SACCANI DISTRIBUTING COMPANY,  
13 a California corporation

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SACRAMENTO

16 SACCANI DISTRIBUTING COMPANY,  
17 a California corporation,

18 Plaintiff,

19 v.

20 KEURIG DR. PEPPER INC., a Delaware  
21 corporation; and DOES 1 through 20,  
22 inclusive,

23 Defendants.

CASE NO.

COMPLAINT FOR DAMAGES AND  
OTHER RELIEF

24 Plaintiff SACCANI DISTRIBUTING COMPANY, a California corporation ("Plaintiff" or  
25 "Saccani") alleges against Defendant KEURIG DR. PEPPER INC., a Delaware corporation  
26 ("Defendant" or "Keurig"), and Does 1 through 20, the following:

27 **PARTIES, VENUE AND JURISDICTION**

28 1. Saccani is, and at all times relevant herein was, a California corporation with its  
principal place of business located at 2600 5<sup>th</sup> Street, Sacramento, California 95818. Saccani is a  
small, family-owned, local beverage distribution business. Saccani was founded in April 1933, after  
the repeal of prohibition, to distribute alcohol and beverages throughout the Sacramento region.  
Saccani serves approximately twenty-one (21) counties in Central and Northern California,  
distributing various brands developed at craft breweries, other domestic and imported beers and a

FILED  
Superior Court Of California,  
Sacramento  
02/04/2020  
jhall1  
By \_\_\_\_\_, Deputy  
Case Number:  
34-2020-00274782

1 wide array of nonalcoholic beverages.

2 2. On information and belief, Keurig is now, and was at all times herein mentioned, a  
3 Delaware corporation with its principal place of business located at 53 South Avenue, Burlington,  
4 MA 01803 in the County of Middlesex.

5 3. Saccani does not presently know the true names and capacities, whether individual,  
6 corporate, associate, or otherwise, of Does 1-20, inclusive; therefore, Saccani sues these persons  
7 by such fictitious names and will amend this Complaint to show their true names and capacities  
8 once the same have been ascertained. Saccani is informed and believes, and on that basis alleges,  
9 that each defendant designated herein as a Doe is legally responsible in some manner for the events  
10 and happenings herein referred to, and legally caused injury and damages proximately thereby to  
11 Saccani as alleged herein.

12 4. Saccani is informed and believes, and thereon alleges, that at all times relevant  
13 herein, each defendant, including any defendant fictitiously named, was the agent, servant,  
14 employee, joint venturer, or partner of each of the other defendants, and was at all times acting  
15 within the purpose and the scope of such servitude, employment, agency, joint venture, or  
16 partnership or at the direction of the other defendants. Each defendant has ratified and approved  
17 the acts of its agents.

18 5. Saccani is informed and believes, and thereon alleges, that at all times relevant  
19 herein, each defendant aided and abetted, and acted in concert with and/or conspired with, each and  
20 every other defendant to commit the acts complained of herein and to engage in a course of conduct  
21 and business practices complained of herein.

#### 22 FACTUAL ALLEGATIONS

23 6. In 2006, Saccani and Xyience Beverage Company, LLC ("Xyience") began  
24 negotiations regarding exclusive distribution of Xyience energy drink products – "Xenergy" and  
25 "Xydrate" ("Products") – and ultimately agreed on terms to govern their relationship. As a result,  
26 the parties have continuously operated under the terms of a Distribution Agreement entered into in  
27 or about July 2006 (the "Agreement"). Since 2006, the Agreement provided Saccani with the  
28 exclusive rights to distribute the Products within eighteen (18) counties of Northern California. In



1 doing so, Saccani invested its money, time, talent, and efforts into promoting the Products and  
2 building Defendants' brand, equity, and goodwill within the 18-county territory it serviced. On  
3 information and belief, Saccani's efforts increased Xyience's market share within Northern  
4 California.

5 7. In 2014, Big Red Group Holdings, LLC ("Big Red") purchased Xyience and  
6 continued manufacturing the Products. Following the acquisition, it also continued to honor the  
7 terms of the Agreement, including but not limited to pricing, payment, product quality and  
8 geographic exclusivity. Indeed, no material changes to Saccani's distribution rights as to the  
9 Products occurred.

10 8. In 2018, Keurig purchased Big Red and, as a result, the Xyience brand. On  
11 November 20, 2018, Saccani was notified of this acquisition as it related to Xyience. Following  
12 the acquisition, Keurig initially honored Saccani's exclusive distribution rights as set forth in the  
13 Agreement – evidencing the parties' intent for such terms to continue to govern their relationship.

14 9. During the months following the Keurig acquisition, however, Saccani became  
15 aware sales representatives from 7-UP, a subsidiary of Keurig, were distributing the Xyience  
16 Products in Saccani's exclusive territories. Shortly after notifying Keurig of this encroachment,  
17 Keurig issued Saccani a Notice of Termination of Xyience Distribution on March 27, 2019, to be  
18 effective as of April 30, 2019.

19 10. At no time since 2006 have the terms governing Saccani's distribution of Xyience  
20 Products been questioned, amended or re-negotiated by Xyience, Big Red or Keurig. Both Big Red  
21 and Keurig ratified the terms of the Agreement by adhering to the parties' thirteen-year course of  
22 conduct.

23 11. Since 2006, Saccani has relied on the existence of the Agreement, as delivered by  
24 Xyience, and performed in accordance with its terms. Saccani spent thirteen (13) years developing  
25 a market for Xyience's products and investing its time, money, and resources into building  
26 Xyience's brand in its territory. Saccani maintained warehouses, trucks and equipment and trained  
27 sales staff to promote Xyience's products. Saccani and Xyience periodically discussed sales  
28 objectives and the performance of Saccani's staff. At no point over the course of the parties'

1 thirteen-year relationship did Xyience object to any of the terms of the Agreement or assert a belief  
2 that the Agreement was not in effect. Further, Xyience continued to perform its own obligations  
3 consistent with the Agreement, manifesting the parties' intent that the Agreement was in effect and  
4 governed their relationship. Saccani in turn performed its obligations in reliance on the  
5 enforceability of the terms of the Agreement. At all relevant times, the parties abided by the terms  
6 and provisions of the Agreement. This includes the termination provisions, apart from Defendants'  
7 failure to pay the amounts due as a result thereof.

8 12. The Agreement provides specific terms regarding a termination of Saccani's  
9 distribution rights without cause. Xyience provided thirty (30) days' notice of its termination of  
10 Saccani's distribution rights in accordance with those provisions of the Agreement, entitling  
11 Saccani to liquidated damages and repurchase of its inventory plus laid-in costs.

12 13. Even in the absence of a written agreement, Saccani and Xyience's course of  
13 conduct over the past thirteen years evidences an implied contract as related to Saccani's  
14 distribution rights, which is supported by the parties' course of conduct and the custom and usage  
15 of trade in the industry. It is custom in the beverage distribution industry to provide thirty (30) days'  
16 notice to terminate distribution rights and to pay liquidated damages plus repurchase of inventory  
17 including laid in costs. By failing to pay these amounts upon termination of the parties' relationship  
18 and Saccani's distribution rights, Defendants have been unjustly enriched. Defendants must be  
19 estopped from denying the existence of an agreement that provides for compensation upon  
20 termination without cause.

21 14. As a result of Defendants' actions Saccani has suffered and will continue to suffer  
22 damages in excess of the minimum jurisdictional amount of this Court, the exact amount to be  
23 determined at trial.

#### 24 FIRST CAUSE OF ACTION

#### 25 **Breach of Contract** 26 **(Against All Defendants)**

27 15. Saccani repeats and realleges the allegations contained in paragraphs 1 through 14  
28 and by reference incorporates the same as though fully set forth herein.



1           16.     The parties entered into the Agreement in 2006. The Agreement sets forth the terms  
2     and conditions expected of Saccani in distributing the Products, including, among other things, the  
3     pricing and payment structure, product quality, and geographic exclusivity terms. The parties  
4     operated pursuant to the Agreement until it was terminated.

5           17.     Defendants terminated the Agreement without cause by providing thirty (30) days'  
6     notice.

7           18.     As a result, Defendants owe Saccani liquidated damages and an amount necessary  
8     to repurchase inventory plus laid in costs as set forth in the Agreement. Saccani is also entitled to  
9     all other damages caused by Defendants' breach.

10          19.     As a proximate result of Defendants' wrongful conduct as alleged herein, Saccani  
11     has suffered and will continue to suffer damages in excess of the minimum jurisdictional amount  
12     of this Court, the exact amount to be determined at trial.

13                                 **SECOND CAUSE OF ACTION**

14                                 **Breach of the Implied Covenant of**  
15                                 **Good Faith and Fair Dealing**  
                                     **(Against All Defendants)**

16          20.     Saccani repeats and realleges the allegations contained in paragraphs 1 through 19  
17     and by reference incorporates the same as though fully set forth herein.

18          21.     The parties entered into the Agreement in 2006. The Agreement sets forth the terms  
19     and conditions expected of Saccani in distributing the Products, including, among other things, the  
20     pricing and payment structure, product quality, and geographic exclusivity terms. The parties  
21     operated pursuant to the Agreement until it was terminated.

22          22.     Defendants breached the covenant of good faith and fair dealing when Defendants  
23     failed to compensate Saccani as a result of the termination by paying liquidated damages and an  
24     amount necessary to repurchase inventory plus laid in costs as set forth in the Agreement.

25          23.     Defendants' conduct unfairly prevented Saccani from receiving the benefits of the  
26     contract.

27          24.     Defendants are liable to Saccani for its damages and losses resulting from  
28     Defendants' breach of good faith and fair dealing.

25. As a proximate result of Defendants' wrongful conduct as alleged herein, Saccani has suffered and will continue to suffer damages in excess of the minimum jurisdictional amount of this Court, the exact amount to be determined at trial.

### THIRD CAUSE OF ACTION

## Breach of Implied Contract (Against All Defendants)

26. Saccani repeats and realleges the allegations contained in paragraphs 1 through 25 and by reference incorporates the same as though fully set forth herein.

27. The parties' thirteen-year business relationship was based on the understanding that Saccani would have exclusive distribution rights as to the Products in eighteen (18) counties in Northern California and would be compensated for its efforts in the event of a termination in accordance with the industry standards.

28. Saccani has acted in good faith to fulfill, and has fulfilled, its obligations as distributor of the Products since 2006. Similarly, Defendants have acted in accordance with such mutual understanding of Saccani's distribution rights and the termination thereof by, among other things, operating under the agreed-upon terms for thirteen (13) years and regularly engaging in discussions regarding sales objectives and further performance by Saccani. An implied contract exists based on the acts and conduct of the parties, and the surrounding circumstances, including their agreement regarding price setting, payment structure, product quality, and geographic exclusivity.

29. Defendants breached the implied contract by terminating Saccani's distribution rights without paying Saccani liquidated damages and repurchasing inventory plus paying laid in costs as is customary upon termination of beverage distribution rights.

30. As a proximate result of Defendants' wrongful conduct as alleged herein, Saccani has suffered and will continue to suffer damages in excess of the minimum jurisdictional amount of this Court, the exact amount to be determined at trial.

///

///



**FOURTH CAUSE OF ACTION**

**Promissory Estoppel  
(Against All Defendants)**

31. Saccani repeats and realleges the allegations contained in paragraphs 1 through 30 and by reference incorporates the same as though fully set forth herein.

32. Defendants promised to pay liquidated damages and repurchase inventory in the event Saccani's distribution rights were terminated by Defendants without cause. Saccani relied on this promise, which Defendants have failed and refused to perform.

33. Saccani's reliance on Defendants' promise was both reasonable and foreseeable based on industry practice and custom as Saccani exclusively distributed the Products in eighteen (18) counties in Northern California for thirteen (13) years, increasing Defendants' market share in such geographic location. Further, the parties operated under the agreed-upon terms for thirteen (13) years and regularly engaged in discussions regarding sales objectives and further performance.

34. As a result of Saccani's reliance on Defendants' promises, and conduct over the last thirteen years, Saccani has suffered and will continue to suffer damages in excess of the minimum jurisdictional amount of this Court, the exact amount to be determined at trial.

**FIFTH CAUSE OF ACTION**

**Unjust Enrichment  
(Against All Defendants)**

35. Saccani repeats and realleges the allegations contained in paragraphs 1 through 34 and by reference incorporates the same as though fully set forth herein.

36. Saccani has invested its money, time, talent, and efforts into promoting Defendants' products and building Defendants' brand, equity, and goodwill within Saccani's exclusive region over the last thirteen (13) years.

37. Defendants have benefited from this investment and continue to benefit from it, which Saccani would not have made but for the understanding that Saccani was protected against termination by Defendants without the payment of liquidated damages and repurchase of inventory to compensate it for its efforts in increasing the value of Defendants' Products.

38. Defendants have benefited from Saccani's efforts for thirteen years, and now, under new leadership after its recent acquisition refuse to compensate Saccani for such investment.

39. As a result of Defendants' actions, Saccani is entitled to recover amounts by which Defendants have been unjustly enriched. It would be unjust for Defendants to retain the benefits of the investments, efforts and services of Saccani without paying the reasonable value thereof.

40. Saccani is entitled to restitution in an amount equal to the reasonable value of such investment and efforts into promoting Defendants' products and building Defendants' brand, equity, and goodwill within Saccani's exclusive region over the last thirteen (13) years, that amount, which is not less than the liquidated damages plus repurchase of inventory including laid in costs provided in the Agreement and/or is custom in the beverage distribution industry, is to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Saccani prays for judgment against Defendants as follows:

1. For compensatory damages in an amount according to proof;
2. For other economic and consequential damages in an amount to be determined at trial;
3. For liquidated damages;
4. For restitution in an amount according to proof;
5. For pre-judgment interest in an amount according to proof;
6. For reasonable attorneys' fees and costs incurred;
7. For costs of suit; and/or
8. For such other and further relief as the court may deem proper.

DATED: January 31, 2020

DELFINO MADDEN O'MALLEY COYLE &  
KOEHLER LLP

By: 

MONICA HANS FOLSOM

KRISTIN N. IVANCO

Attorneys for Plaintiff

SACCANI DISTRIBUTION COMPANY



**EXHIBIT B3**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Monica Hans Folsom; Kristin N. Ivanco (227379/294993) DELFINO MADDEN O'MALLEY COYLE & KOEWLER LLP 500 Capitol Mall, Suite 1550 Sacramento, CA 95814 TELEPHONE NO.: (916) 661-5700 FAX NO.: (916) 661-5701 ATTORNEY FOR (Name): Saccani Distributing Company		FOR COURT USE ONLY  FILED Superior Court Of California, Sacramento 02/04/2020 jha/11 By _____, Deputy Case Number:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 - 9th Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME:		CASE NUMBER: 2020-00274782  JUDGE: DEPT.:
CASE NAME: Saccani Distributing Company v. Keurig Dr. Pepper, Inc., and DOES 1-20		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)  <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)  <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)  <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)  <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)  <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)  <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)  <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)  <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)  <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 5
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 31, 2020

Monica Hans Folsom

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability *(not asbestos or toxic/environmental)* (24)  
Medical Malpractice (45)  
Medical Malpractice-Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice *(not medical or legal)*  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*  
Contract/Warranty Breach-Seller Plaintiff *(not fraud or negligence)*  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case-Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage *(not provisionally complex)* (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ-Administrative Mandamus  
Writ-Mandamus on Limited Court Case Matter  
Writ-Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal-Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment *(non-domestic relations)*  
Sister State Judgment  
Administrative Agency Award *(not unpaid taxes)*  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint *(not specified above)* (42)  
Declaratory Relief Only  
Injunctive Relief Only *(non-harassment)*  
Mechanics Lien  
Other Commercial Complaint Case *(non-tort/non-complex)*  
Other Civil Complaint *(non-tort/non-complex)*

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition *(not specified above)* (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief from Late Claim  
Other Civil Petition

**EXHIBIT B4**



**SUMMONS**  
**(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

Keurig Dr. Pepper, Inc., a Delaware corporation,  
and DOES 1 through 20, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Saccani Distributing Company, a California  
corporation

**FILED**  
Superior Court Of California,  
Sacramento

02/04/2020

jhall1

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Sacramento County Superior Court  
720. 9th Street  
Sacramento, CA 95814

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Monica Hans Folsom / Kristin N. Ivanco (227379/294993)  
Delfino Madden O'Malley Coyle & Koewler LLP  
500 Capitol Mall, Suite 1550; Sacramento, CA 95814; (916) 661-5700

CASE NUMBER  
(Número del Caso):

DATE: **FEB 04 2020** Clerk, by **J. HALL**, Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)  
☐ CCP 416.20 (defunct corporation)  
☐ CCP 416.40 (association or partnership)  
☐ other (specify):

☐ CCP 416.60 (minor)  
☐ CCP 416.70 (conservatee)  
☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

**EXHIBIT B5**



<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO</b> STREET ADDRESS: 720 Ninth STREET MAILING ADDRESS: 720 Ninth STREET CITY AND ZIPCODE: Sacramento, CA 95814-1311 BRANCH NAME: Gordon D Schaber Courthouse PHONE NUMBER: (916) 874-5522	FOR COURT USE ONLY
<b>SHORT TITLE:</b> Saccani Distributing Company vs. Keurig Dr. Pepper Inc.	
<b>NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER TO APPEAR</b>	<b>CASE NUMBER:</b> 34-2020-00274782-CU-BC-GDS

### Hearing Date

The above entitled action has been set for a case management conference at 08:30 AM on 08/06/2020 in Department 31 in accordance with California Rules of Court 212. You must be familiar with the case and fully prepared to participate effectively in the case management conference.

### Case Management Statement

All parties must file and serve a case management statement at least 15 calendar days before the case management conference. Parties are encouraged to file a single joint case management statement.

### Minimum Requirements

Prior to the filing of the case management statement, the parties should have done the following:

- Served all parties named in the complaint within 60 days after the summons has been issued
- Ensured that all defendants and cross-defendants have answered, been dismissed, or had their defaults entered
- Met and conferred with all parties as required by CRC 212 (f) to discuss and resolve issues set forth therein.

### Tentative Ruling

Following its review of the case management statement(s), the court may determine that a case management conference is not necessary.

To determine whether an appearance is required, the parties must check the court's tentative rulings after 2:00 p.m. on the Court day before the Thursday calendar by accessing the court's internet website at [www.saccourt.ca.gov](http://www.saccourt.ca.gov)

### Case Management Orders

At the case management conference, the court will consider whether the case should be ordered to judicial arbitration or referred to other forms of Alternative Dispute Resolution. Whether or not a case management conference is held, the court will issue a case management order shortly after the scheduled conference date.

### Service of Case Management Notice

Unless otherwise ordered by the court, plaintiff shall serve a copy of this notice on any party to the complaint appearing after the court issued this notice. The cross-complainant shall have the same obligation with respect to the cross-complaint.

### Certification Filed in Lieu of Case Management Statement

If parties in the action file a certification on a form provided by the court at least 15 calendar days prior to the date of the case management conference that the case is short cause (five hours or less of trial time), that the pleading stage is complete and that the case will be ready for trial within 60 days, the case will be exempted from any further case management requirements and will be set for trial within 60-120 days. The certification shall be filed in lieu of a case management statement.

**Compliance**

Failure to comply with this notice or to appear at the case management conference may result in the imposition of sanctions (including dismissal of the case, striking of the answer, or payment of money).

**Continuances**

Case management conference will not be continued except on a showing of good cause. If your case management conference is continued on motion or by the court on its own motion all parties shall file and serve a new case management statement at least 15 calendar days before the continued case management conference.

Dated: 02/05/2020



Gerrit W. Wood, Judge of the Superior Court



**EXHIBIT B6**



**SUPERIOR COURT OF CALIFORNIA**  
COUNTY OF SACRAMENTO  
SACRAMENTO, CALIFORNIA, 95814  
916-874-5522  
[WWW.SACCOURT.CA.GOV](http://WWW.SACCOURT.CA.GOV)

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**ALTERNATIVE DISPUTE RESOLUTION  
INFORMATION PACKAGE**

Recognizing that many civil disputes can be resolved without the time and expense of traditional civil litigation, the Superior Court of California, County of Sacramento (Sacramento County Superior Court), strongly encourages parties in civil cases to explore and pursue the use of Alternative Dispute Resolution.

**What is Alternative Dispute Resolution?**

Alternative Dispute Resolution (ADR) is the general term applied to a wide variety of dispute resolution processes which are alternatives to lawsuits. Types of ADR processes include:

- Arbitration
- Mediation
- Settlement Conferences
- Private judging
- Neutral evaluation
- Mini-trials
- Negotiation and *hybrids* of these processes

All ADR processes offer a partial or complete alternative to traditional court litigation for resolving disputes. At the present time, the Sacramento County Superior Court offers Mediation and Arbitration.

**What are the advantages of using ADR?**

ADR can have a number of advantages over traditional court litigation.

- \* **ADR can save time.** Even in a complex case, a dispute can be resolved through ADR in a matter of months or weeks, while a lawsuit can take years.
- \* **ADR can save money.** By producing earlier settlements, ADR can save parties and courts money that might otherwise be spent on litigation costs (attorneys fees and court expenses.)
- \* **ADR provides more participation.** Parties have more opportunity with ADR to express their own interests and concerns, while litigation focuses exclusively on the parties' legal rights and responsibilities.
- \* **ADR provides more control and flexibility.** Parties can choose the ADR process most appropriate for their particular situation and that will best serve their particular needs.
- \* **ADR can reduce stress and provide greater satisfaction.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere found in litigation. Surveys of disputants who have gone through ADR have found that satisfaction with ADR is generally high, especially among those with extensive ADR experience.

**Arbitration and Mediation**

Although there are many different types of ADR processes, the types most commonly used to resolve disputes in California state courts are Arbitration and Mediation. The Sacramento County Superior Court currently offers pre-screened panelists with experience and training in each of the following areas.

**Arbitration.** An Arbitrator hears evidence presented by the parties, makes legal rulings, determines facts and makes an Arbitration award. Arbitration awards may be entered as judgments in accordance with the agreement of the parties or, where there is no agreement, in accordance with California statutes. Arbitration can be binding if the parties so agree in writing. If there is no such agreement, either party can reject the Arbitration award and request a trial.



**Mediation.** Mediation is a voluntary, informal, confidential process in which the Mediator, a neutral third party, facilitates settlement negotiations. The Mediator improves communication by and among the parties, helps parties clarify facts, identify legal issues, explore options and arrive at a mutually acceptable resolution of the dispute.

Litigants are encouraged to use an ADR process as early in the case as circumstances permit. All appropriate cases will be reviewed for referral to ADR at the Case Management Conference(CMC).

#### **ADR Procedures for the Sacramento County Superior Court**

Upon filing a complaint or cross-complaint, the plaintiff/cross-complainant must acquire this information package from the Court's Website, <http://www.saccourt.ca.gov>, or the Superior Court Clerk. Plaintiff is required to include the ADR Information Package when he or she serves the Complaint on the Defendant.

The court's ADR Panel List is available on-line at <http://www.saccourt.ca.gov> or may be obtained at the Civil Filing Counter at the Gordon D. Schaber Sacramento County Courthouse, 720 Ninth Street, Room 101, Sacramento, CA 95814.

#### **Mediation.**

All parties to the dispute may voluntarily agree to submit the case to a neutral Mediator, either through a court-appointment or through a private arrangement. The parties may choose either of the following Mediation choices:

**Private Mediation.** Parties to a civil action agree to mediate their dispute with a Mediator of their choice without court assistance. The cost of Mediation must be borne by the parties equally unless the parties agree otherwise. Parties will be charged an amount as set by the Mediator (refer to the ADR Panel List for current rates).

**Court Mediation.** Upon stipulation of the parties, a Mediator and alternate Mediator will be selected from the court-approved list of neutrals (ADR Panel List). The court will confirm the selected Mediator and notice parties by mail.

The Mediator is then responsible for contacting the parties to confirm a date, time, and place for Mediation. Mediators on the court's approved ADR Panel List have agreed to provide up to three (3) hours of pro-bono Mediation. In the event the Mediation extends beyond 3 hours and parties determine it would be beneficial to continue the Mediation process; the parties will independently be responsible for compensating the Mediator in an amount as set by the Mediator.

#### **UNLIMITED CIVIL CASES**

- A *Stipulation and Order to Mediation – Unlimited Civil Cases*, Form CVE-MED-179 (see attached) may be filed with the court at any time up to 15 calendar days prior to the Case Management Conference.
- If the parties do not stipulate to Mediation prior to their CMC, they may indicate their willingness to stipulate to Mediation at the CMC. In that event, parties must submit a *Stipulation and Order to Mediation – Unlimited Civil Cases* within 14 calendar days after their CMC.
- A *Mediation Statement* must be filed with the *Case Management Statement*.

#### **LIMITED CIVIL CASES**

- Parties may select and conduct voluntary Private Mediation without notification to the Court.
- Parties may stipulate to court mediation by filing a *Stipulation and Order to Arbitration/Mediation - Limited Civil Cases* form (CVE-203) at any time after the filing of the Limited Civil Case Status Memorandum form (CVE-202). This form is located on the court's website at <http://www.saccourt.ca.gov>. A *Stipulation and Order to Arbitration/Mediation – Limited Civil Cases* MUST be filed concurrently or subsequent to a Limited Civil Case Status Memorandum.





## **Arbitration**

### **UNLIMITED CIVIL CASES**

- Plaintiff may elect, the parties may stipulate, or the judge may Order the case to Arbitration. Parties will be asked to select an Arbitrator and three alternate Arbitrators from the court's ADR Panel List. The court will send a Notice of Appointment and an appropriate Order to Arbitration to all parties.
- Arbitrations are conducted pursuant to California Rules of Court, rules 3.810 through 3.830, and Local Rules Chapter 2, Part 5. Unless otherwise stipulated, an Award of Arbitrator is not binding upon the parties provided that they file a timely Request for Trial De Novo pursuant to California Rules of Court, rule 3.826. Upon the filing of a timely Request for Trial De Novo, the case will proceed to a Trial-Setting Conference. If no timely Request for Trial De Novo is filed, judgment based upon the Award of Arbitrator will be entered pursuant to California Rules of Court, rule 3.827.

### **LIMITED CIVIL CASES**

Arbitration may occur in a limited civil case under the following circumstances:

- When all parties stipulate to arbitration pursuant to Code of Civil Procedure section 1141.12. A stipulation for arbitration shall be filed using the Court's local form, Stipulation and Order to Arbitration/Mediation – Limited Civil Cases form (CVE-203). A Stipulation and Order to Arbitration/Mediation – Limited Civil Cases MUST be filed concurrently or subsequent to a Limited Civil Case Status Memorandum form (CVE-202).
- When plaintiff elects to refer the case to judicial arbitration. A written election by the plaintiff to submit an action or proceeding to arbitration shall be filed using the Court's local form, Limited Civil Case Status Memorandum form (CVE-202).

### **Additional Information**

For additional information regarding the Court's ADR program, please go to the Court's website  
<http://www.saccourt.ca.gov>.

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME, STATE BAR # AND ADDRESS):   <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">           TELEPHONE NO.            EMAIL ADDRESS (Optional)            ATTORNEY FOR (NAME):         </div> <div style="width: 45%;">           FAX NO. (Optional)         </div> </div>	FOR COURT USE ONLY
<b>Superior Court of California, County of Sacramento</b> 720 Ninth Street, Room 101 Sacramento, CA 95814-1380 (916) 874-5522—Website <a href="http://www.saccourt.ca.gov">www.saccourt.ca.gov</a>	
PLAINTIFF/PETITIONER:	CASE MANAGEMENT CONFERENCE DATE:
DEFENDANT/RESPONDENT:	
<b>STIPULATION AND ORDER TO MEDIATION – UNLIMITED CIVIL</b>	CASE NUMBER:  ASSIGNED DEPT.:

The parties and their attorneys stipulate that the claims in this action shall be submitted to the following mediation process:

**Type of Mediation (select one):**

☐ 1. **Court Mediation.** Mediators on the court's approved ADR Panel List have agreed to provide up to three (3) hours of pro-bono Mediation. In the event the Mediation extends beyond 3 hours and parties determine it would be beneficial to continue the Mediation process: the parties will independently be responsible for compensating the Mediator in an amount as set by the Mediator.

☐ 2. **Court Mediation in lieu of previously ordered Arbitration.** Mediator's on the court's approved ADR Panel List have agreed to provide up to three (3) hours of pro-bono Mediation. In the event the Mediation extends beyond 3 hours and parties determine it would be beneficial to continue the Mediation process: the parties will independently be responsible for compensating the Mediator in an amount as set by the Mediator.

☐ 3. **Private Mediation.** Per Local Rule 2.84 the cost of mediation must be borne by the parties equally unless the parties agree otherwise. Parties will be charged an amount as set by the Mediator.

☐ 4. **Private Mediation in lieu of previously ordered Arbitration.** Per Local Rule 2.84 the cost of mediation must be borne by the parties equally unless the parties agree otherwise. Parties will be charged an amount as set by the Mediator.

### **Neutral**

Court Neutral Selected:  
(If type of Mediation selected above is option 1 or 2)

Name \_\_\_\_\_

Alternate Court Neutral Selected:  
(If type of Mediation selected above is option 1 or 2)

Name \_\_\_\_\_

Alternate Court Neutral Selected:  
(If type of Mediation selected above is option 1 or 2)

Name \_\_\_\_\_

Private Neutral Selected:  
(If type of Mediation selected above is option 3 or 4)

Name \_\_\_\_\_

### **Other Stipulations**

☐ Discovery to remain open 30 days prior to trial.

Additional Stipulations: \_\_\_\_\_

**STIPULATION AND ORDER TO MEDIATION – UNLIMITED CIVIL**

PLAINTIFF/PETITIONER: \_\_\_\_\_ CASE NUMBER: \_\_\_\_\_

DEFENDANT/RESPONDENT: \_\_\_\_\_

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

Bar # \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

Bar # \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

Bar # \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant Dated: \_\_\_\_\_

☐ Additional Signature Page(s) Attached

**ORDER**

The foregoing stipulation having been read and considered, and good cause appearing, now therefore:

- ☐ Stipulation and Order to Mediation deferred to Case Management Conference.
- ☐ The Court orders the parties to enter mediation as stipulated above, pursuant to Chapter Two – Part 5 of the Local Rules.
- ☐ Previously scheduled Case Management Conference is vacated.
- ☐ Previous order to Arbitration is vacated and appointment of Arbitrator rescinded.
- ☐ The case is ordered to the Trial-Setting Process. The Trial and Settlement Conference dates shall be selected no later than \_\_\_\_\_.
- ☐ Trial-Setting Conference is vacated.
- ☐ Time to Select Trial date and Mandatory Settlement Conference date is extended to \_\_\_\_\_.
- ☐ Mediation Status Conference set for: \_\_\_\_\_  
Date Time Department
- ☐ Stipulation and Order to Mediation denied.
- ☐ It is further ordered that: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

**Judge of the Superior Court**



**STIPULATION AND ORDER TO MEDIATION**

*(Additional Signature Page)*

PLAINTIFF/PETITIONER: \_\_\_\_\_ CASE NUMBER: \_\_\_\_\_

DEFENDANT/RESPONDENT: \_\_\_\_\_

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

Bar # \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

Bar # \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

Bar # \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

Bar # \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

Bar # \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant Dated: \_\_\_\_\_

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME, STATE BAR # AND ADDRESS):  TELEPHONE NO. _____ FAX NO. (Optional) _____ EMAIL ADDRESS (Optional) _____ ATTORNEY FOR (NAME): <b>Superior Court of California, County of Sacramento</b> 720 Ninth Street, Room 101 Sacramento, CA 95814-1380 (916) 874-5522—Website www.saccourt.ca.gov	FOR COURT USE ONLY
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT:	
<b>MEDIATION STATEMENT</b>	CASE NUMBER:  ASSIGNED DEPT:

**A CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_

Address of court (if different from the address above): \_\_\_\_\_

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

All parties have considered Mediation as a means to resolving this case and have agreed:

☐ **Mediation is appropriate for this case.** Parties have submitted a *Stipulation and Order for Mediation* form or will submit a *Stipulation* within 14 days following the Case Management Conference.

☐ **Mediation is not appropriate for this case for the following reasons:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and Alternative Dispute Resolution (ADR), as well as other issues raised by this statement, and will possess the authority to enter into stipulation on these issues at the time of the Case Management Conference, including the written authority of the party where required.

Date: \_\_\_\_\_

\_\_\_\_\_  
 (Type or Print Name)

▶ \_\_\_\_\_  
 (Signature of Party or Attorney)

\_\_\_\_\_  
 (Type or Print Name)

▶ \_\_\_\_\_  
 (Signature of Party or Attorney)

Mediation Statement



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):       TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)	
CASE NUMBER: _____	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____  <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): _____	

**INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.**

1. **Party or parties (answer one):**
  - a. ☐ This statement is submitted by party (name):
  - b. ☐ This statement is submitted jointly by parties (names):
  
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
  - a. The complaint was filed on (date):
  - b. ☐ The cross-complaint, if any, was filed on (date):
  
3. **Service (to be answered by plaintiffs and cross-complainants only)**
  - a. ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
  - b. ☐ The following parties named in the complaint or cross-complaint
    - (1) ☐ have not been served (specify names and explain why not):
    - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
    - (3) ☐ have had a default entered against them (specify names):
  - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
  
4. **Description of case**
  - a. Type of case in ☐ complaint ☐ cross-complaint (Describe, including causes of action):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request ☐ a jury trial ☐ a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**

a. ☐ The trial has been set for (date):

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. **Estimated length of trial**

The party or parties estimate that the trial will take (check one):

a. ☐ days (specify number):

b. ☐ hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference (specify code section):

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation (if available).**

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form <b>are willing to</b> participate in the following ADR processes ( <i>check all that apply</i> ):	If the party or parties completing this form in the case <b>have agreed to</b> participate in or have already completed an ADR process or processes, indicate the status of the processes ( <i>attach a copy of the parties' ADR stipulation</i> ):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):



PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**11. Insurance**

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

**12. Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

**13. Related cases, consolidation, and coordination**

- a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

☐ Additional cases are described in Attachment 13a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

**14. Bifurcation**

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

**15. Other motions**

- ☐ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

**16. Discovery**

- a. ☐ The party or parties have completed all discovery.

- b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

Party

Description

Date

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**17. Economic litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case)*:

**18. Other issues**

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify)*:

**19. Meet and confer**

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain)*:
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify)*:

20. Total number of pages attached *(if any)*: \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

**EXHIBIT B7**

TO (insert name of party being served): Keurig Dr. Pepper, Inc.

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: March 17, 2020

**Monica Hans Folsom**  
(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

**This acknowledges receipt of (to be completed by sender before mailing):**

1. ☒ A copy of the summons and of the complaint.
2. ☒ Other (specify):

Civil Case Cover Sheet; Notice of Case Management Conference and Order to Appear; ADR Information Package; [blank] Stipulation and Order to Mediation - Unlimited Civil; [blank] Mediation Statement; [blank] Case Management Statement

***(To be completed by recipient):***

Date this form is signed: \_\_\_\_\_

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,  
ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF  
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

## **EXHIBIT C**



**VIA EMAIL & U.S. MAIL**

August 7, 2019

Keurig Dr. Pepper  
Attn: Marc Yarbrough  
5301 Legacy Drive  
Plano, Texas 75024  
[Marc.Yarbrough@kdrp.com](mailto:Marc.Yarbrough@kdrp.com)

Re: *Termination of Xyience Distribution Agreement with Saccani Distributing Company*

Dear Mr. Yarbrough:

As you know, our office represents Saccani Distributing Company (“**Saccani**”) in relation to the above-referenced matter. Please direct all future correspondence to my attention as I will be handling this matter going forward. I am in receipt of your email dated July 19, 2019 on behalf of Xyience Beverage Company (a Keurig Dr Pepper Company) (“**Xyience**”). This letter responds to the same and makes one final attempt to resolve this matter before resorting to litigation.

While quite creative, the analysis performed by your IT team has no material effect on the dispute at hand. The document attached to Elizabeth Jackson’s email of May 8, 2019 was created and modified when the Distribution Agreement between Xyience and Saccani (the “**Agreement**”) was converted to a PDF document to send with the initial demand from Saccani. That fact has no bearing on the contents of the Agreement or its enforceability. In response to your claim that the form is “entirely different than the standard form Xyience/Big Red provided to [you],” we have the email from Xyience to Saccani transmitting the initial version of the Agreement. This email is dated June 21, 2006 and establishes that Xyience drafted the Agreement and provided it to Saccani. It is substantially similar to the final version of the Agreement executed by the parties and exchanged via facsimile transmission as requested by Xyience via email on or about July 25, 2006. Following the transmission of such Agreement and its execution by both parties, no further follow-up occurred regarding the Agreement. It was a done deal. As to the sophistication of Xyience’s legal counsel in 2006, that is not something we are in the position to evaluate but we assume the company had competent legal counsel to eventually reach its current level of success. If there was not a distribution agreement between the parties, why did Xyience provide a 30-day “Notice of Termination of Xyience Distribution” consistent with the Agreement?

Xyience and Saccani have been operating under the Agreement since 2006, more than a decade before Keurig Dr. Pepper's acquisition of Xyience's parent company, Big Red, Inc. During that time, each of the parties has abided by the terms of the Agreement, including pricing, payment, product quality, and geographic exclusivity terms, among others. Such actions evidence the parties' intent for the Agreement to govern their relationship.

Even in the absence of the Agreement, there was a clear and unambiguous promise made by Xyience to abide by the terms of the distributor relationship contained in the Agreement, including the termination penalties that conformed with industry standards, which was reasonably and foreseeably relied on by Saccani in performing the services.<sup>1</sup> Without enforcement of the promise made by Xyience, Saccani will suffer substantial harm. Saccani spent approximately thirteen years developing a market for Xyience's products and investing its time, money, and resources into building Xyience's brand in Northern California. Saccani maintained warehouses, trucks and equipment, and trained sales staff to promote Xyience's products. Xyience and Saccani periodically discussed sales objectives and the performance of Saccani's staff. At no point over the course of the parties' thirteen-year relationship did Xyience object to any of the terms of the Agreement or assert a belief that the Agreement was not in effect. Further, Xyience continued to perform its own obligations consistent with the Agreement. Any reasonable person would interpret these actions as a manifestation of the parties' intent that the Agreement was in effect and governed their relationship. Further, any reasonable person would expect that Saccani was performing its obligations in reliance on the enforceability of the terms of the Agreement and applicable industry standards. The lack of a signed copy of the Agreement in Saccani's possession at this point is irrelevant.

Additionally, the conduct of Xyience and Saccani over the course of the past thirteen years has created an implied contract between the parties consistent with the terms of the Agreement.<sup>2</sup> In addition to the foregoing, and in the absence of the liquidated damages demanded herein, Saccani is entitled to restitution for the benefit it has conferred on Xyience as its distributor for thirteen years.<sup>3</sup> Xyience has been unjustly enriched by Saccani's efforts and continues to benefit from such investment of significant time and money, which Saccani would have not made but for the understanding that Saccani was protected against termination by Xyience unless it received just and fair compensation for its efforts by way of liquidated damages and repurchase of inventory.

For each of the reasons detailed in our previous correspondence as well as those set forth herein, and in an effort to avoid the time and expense associated with litigation, Saccani hereby makes its final demand to settle this matter in its entirety for Two Hundred One Thousand Two Hundred Sixty Dollars (\$201,260). Please share this letter and settlement demand with your client. We look forward to your response **no later than the close of business on August 14, 2019.**

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<sup>1</sup> *Kajima/Ray Wilson v. Los Angeles County Metro. Transp. Auth.*, 23 Cal.4th 305, 310 (2000).

<sup>2</sup> "An implied contract is one, the existence and terms of which are manifested by conduct." *Varni Bros. Corp. v. Wine World, Inc.*, 35 Cal.App.4th 880, 889 (1995). "A course of conduct can show an implied promise." *Cal. Emergency Physicians Med. Group v. PacificCare of Cal.*, 111 Cal.App.4th 1127 (2003); *Reely v. Chapman*, 177 Cal.App.2d 260, 263 (1960).


<sup>3</sup> See *First Nationwide Savings v. Perry*, 11 Cal.App.4th 1657, 1662-63 (1992).

In the meantime, and absent a resolution of this dispute, please also ensure that Xyience complies with the enclosed Litigation Hold Notice. If Saccani is required to pursue this matter further, it will be forced to pursue recovery of its damages against Xyience through the filing of the enclosed Complaint.<sup>4</sup>

If you have any questions, or would like to discuss the matter further, please do not hesitate to contact me.

Sincerely,

DELFINO MADDEN O'MALLEY COYLE & KOEWLER, LLP



Monica Hans Folsom

Enclosures

cc: Client (via email)

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<sup>4</sup> Saccani expressly reserves the right to modify this draft Complaint to add additional claims, as appropriate.

RE: TERMINATION OF XYIENCE DISTRIBUTION AGREEMENT WITH SACCANI DISTRIBUTING COMPANY/DISTRIBUTION RIGHTS

TO: KEURIG DR. PEPPER, BIG RED, INC. & XYIENCE BEVERAGES, INC.

This Litigation Hold Notice serves as a formal demand that you take or cause to be taken all appropriate affirmative steps to preserve any and all evidence related to Saccani's claims concerning or arising out of your termination of the Distribution Agreement between Xyience Beverages, Inc. ("Xyience") and Saccani Distributing Company ("Saccani") (the "Agreement") and any distribution rights granted by Xyience to Saccani (the "Dispute") as required by law and as described below. The destruction or deletion of any evidence may constitute negligent or intentional spoliation of evidence and result in, among other things, monetary, evidentiary and terminating sanctions in any future lawsuit. Intentional spoliation of evidence constitutes a criminal offense pursuant to California Penal Code § 135.

Specifically, you must preserve all relevant paper and electronically stored information and other data including, but not limited to:

- **Electronic files.** Retain all relevant electronic files, including active files, archived files, deleted data which is currently recoverable, and legacy data relevant to the Dispute. Relevant information may be in various electronic formats, such as emails (Outlook PST/Lotus Notes NSF/Gmail)], voicemails, text messages, instant messages (IMs), social media posts, calendars, diaries and word processing files, Google Docs, spreadsheets, PDFs, JPEGs, PowerPoint presentations, Access, and Oracle, and other databases, cloud-based storage, temporary internet files, cookies, and .ZIP files, among others, wherever it resides, including the Internet.
- **Paper documents.** Preserve all paper copies of files, presentations, calendars, diaries, notebooks, and other physical paperwork related to the matter, even if duplicate copies may exist in electronic format.
- **Other materials.** Relevant information is not always presented as a document. Other relevant data (for example, models, diagrams, images, and presentations) also must be retained.
- **Subsequently-made documents.** Your duty to preserve relevant information is ongoing. Be sure to preserve all relevant documents that are composed or received after your receipt of this letter.
- **Electronic hardware and software.** Maintain a copy of hardware and software needed to view electronic files, including all relevant encryption and de-encryption systems, compression and decompression software, and relevant passwords. If hardware containing relevant information is replaced or becomes outdated, retain the appropriate hardware so that relevant data still may be accessed.

Thank you in advance for your cooperation.

1 DELFINO MADDEN O'MALLEY COYLE  
2 & KOEWLER LLP  
3 MONICA HANS FOLSOM (Bar No. 227379)  
4 KRISTIN N. IVANCO (Bar No. 294993)  
5 500 Capitol Mall, Suite 1550  
6 Sacramento, CA 95814  
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8 Facsimile: (916) 661-5701  
9 mfolson@delfinomadden.com  
10 kivanco@delfinomadden.com

11 Attorneys for Plaintiff  
12 SACCANI DISTRIBUTING COMPANY,  
13 a California corporation

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SACRAMENTO

16 SACCANI DISTRIBUTING COMPANY,  
17 a California corporation,

18 Plaintiff,

19 v.

20 KEURIG DR. PEPPER INC., a Delaware  
21 corporation; and DOES 1 through 20,  
22 inclusive,

23 Defendants.

CASE NO.

**COMPLAINT FOR DAMAGES AND  
OTHER RELIEF**

24 Plaintiff SACCANI DISTRIBUTING COMPANY, a California corporation ("Plaintiff" or  
25 "Saccani") alleges against Defendant KEURIG DR. PEPPER INC., a Delaware corporation  
26 ("Defendant" or "Keurig"), and Does 1 through 20, the following:

27 **PARTIES, VENUE AND JURISDICTION**

28 1. Saccani is, and at all times relevant herein was, a California corporation with its  
principal place of business located at 2600 5<sup>th</sup> Street, Sacramento, California 95818. Saccani is a  
small, family-owned, local beverage distribution business. Saccani was founded in April 1933, after  
the repeal of prohibition, to distribute alcohol and beverages throughout the Sacramento region.  
Saccani serves approximately twenty-one (21) counties in Central and Northern California,  
distributing various brands developed at craft breweries, other domestic and imported beers and a



1 wide array of nonalcoholic beverages.

2 2. On information and belief, Keurig is now, and was at all times herein mentioned, a  
3 Delaware corporation with its principal place of business located at 53 South Avenue, Burlington,  
4 MA 01803 in the County of Middlesex.

5 3. Saccani does not presently know the true names and capacities, whether individual,  
6 corporate, associate, or otherwise, of Does 1-20, inclusive; therefore, Saccani sues these persons  
7 by such fictitious names and will amend this Complaint to show their true names and capacities  
8 once the same have been ascertained. Saccani is informed and believes, and on that basis alleges,  
9 that each defendant designated herein as a Doe is legally responsible in some manner for the events  
10 and happenings herein referred to, and legally caused injury and damages proximately thereby to  
11 Saccani as alleged herein.

12 4. Saccani is informed and believes, and thereon alleges, that at all times relevant  
13 herein, each defendant, including any defendant fictitiously named, was the agent, servant,  
14 employee, joint venturer, or partner of each of the other defendants, and was at all times acting  
15 within the purpose and the scope of such servitude, employment, agency, joint venture, or  
16 partnership or at the direction of the other defendants. Each defendant has ratified and approved  
17 the acts of its agents.

18 5. Saccani is informed and believes, and thereon alleges, that at all times relevant  
19 herein, each defendant aided and abetted, and acted in concert with and/or conspired with, each and  
20 every other defendant to commit the acts complained of herein and to engage in a course of conduct  
21 and business practices complained of herein.

22 **FACTUAL ALLEGATIONS**

23 6. In 2006, Saccani and Xyience Beverage Company, LLC ("Xyience") began  
24 negotiations regarding exclusive distribution of Xyience energy drink products – "Xenergy" and  
25 "Xydrate" ("Products") – and ultimately agreed on terms to govern their relationship. As a result,  
26 the parties have continuously operated under the terms of a Distribution Agreement entered into in  
27 or about July 2006 (the "Agreement"). Since 2006, the Agreement provided Saccani with the  
28 exclusive rights to distribute the Products within eighteen (18) counties of Northern California. In



1 doing so, Saccani invested its money, time, talent, and efforts into promoting the Products and  
2 building Defendants' brand, equity, and goodwill within the 18-county territory it serviced. On  
3 information and belief, Saccani's efforts increased Xyience's market share within Northern  
4 California.

5 7. In 2014, Big Red Group Holdings, LLC ("Big Red") purchased Xyience and  
6 continued manufacturing the Products. Following the acquisition, it also continued to honor the  
7 terms of the Agreement, including but not limited to pricing, payment, product quality and  
8 geographic exclusivity. Indeed, no material changes to Saccani's distribution rights as to the  
9 Products occurred.

10 8. In 2018, Keurig purchased Big Red and, as a result, the Xyience brand. On  
11 November 20, 2018, Saccani was notified of this acquisition as it related to Xyience. Following  
12 the acquisition, Keurig initially honored Saccani's exclusive distribution rights as set forth in the  
13 Agreement – evidencing the parties' intent for such terms to continue to govern their relationship.

14 9. During the months following the Keurig acquisition, however, Saccani became  
15 aware sales representatives from 7-UP, a subsidiary of Keurig, were distributing the Xyience  
16 Products in Saccani's exclusive territories. Shortly after notifying Keurig of this encroachment,  
17 Keurig issued Saccani a Notice of Termination of Xyience Distribution on March 27, 2019, to be  
18 effective as of April 30, 2019.

19 10. At no time since 2006 have the terms governing Saccani's distribution of Xyience  
20 Products been questioned, amended or re-negotiated by Xyience, Big Red or Keurig. Both Big Red  
21 and Keurig ratified the terms of the Agreement by adhering to the parties' thirteen-year course of  
22 conduct.

23 11. Since 2006, Saccani has relied on the existence of the Agreement, as delivered by  
24 Xyience, and performed in accordance with its terms. Saccani spent thirteen (13) years developing  
25 a market for Xyience's products and investing its time, money, and resources into building  
26 Xyience's brand in its territory. Saccani maintained warehouses, trucks and equipment and trained  
27 sales staff to promote Xyience's products. Saccani and Xyience periodically discussed sales  
28 objectives and the performance of Saccani's staff. At no point over the course of the parties'

1 thirteen-year relationship did Xyience object to any of the terms of the Agreement or assert a belief  
2 that the Agreement was not in effect. Further, Xyience continued to perform its own obligations  
3 consistent with the Agreement, manifesting the parties' intent that the Agreement was in effect and  
4 governed their relationship. Saccani in turn performed its obligations in reliance on the  
5 enforceability of the terms of the Agreement. At all relevant times, the parties abided by the terms  
6 and provisions of the Agreement. This includes the termination provisions, apart from Defendants'  
7 failure to pay the amounts due as a result thereof.

8 12. The Agreement provides specific terms regarding a termination of Saccani's  
9 distribution rights without cause. Xyience provided thirty (30) days' notice of its termination of  
10 Saccani's distribution rights in accordance with those provisions of the Agreement, entitling  
11 Saccani to liquidated damages and repurchase of its inventory plus laid-in costs.

12 13. Even in the absence of a written agreement, Saccani and Xyience's course of  
13 conduct over the past thirteen years evidences an implied contract as related to Saccani's  
14 distribution rights, which is supported by the parties' course of conduct and the custom and usage  
15 of trade in the industry. It is custom in the beverage distribution industry to provide thirty (30) days'  
16 notice to terminate distribution rights and to pay liquidated damages plus repurchase of inventory  
17 including laid in costs. By failing to pay these amounts upon termination of the parties' relationship  
18 and Saccani's distribution rights, Defendants have been unjustly enriched. Defendants must be  
19 estopped from denying the existence of an agreement that provides for compensation upon  
20 termination without cause.

21 14. As a result of Defendants' actions Saccani has suffered and will continue to suffer  
22 damages in excess of the minimum jurisdictional amount of this Court, the exact amount to be  
23 determined at trial.

#### 24 **FIRST CAUSE OF ACTION**

##### 25 **Breach of Contract** 26 **(Against All Defendants)**

27 15. Saccani repeats and realleges the allegations contained in paragraphs 1 through 14  
28 and by reference incorporates the same as though fully set forth herein.

1           16.     The parties entered into the Agreement in 2006. The Agreement sets forth the terms  
2     and conditions expected of Saccani in distributing the Products, including, among other things, the  
3     pricing and payment structure, product quality, and geographic exclusivity terms. The parties  
4     operated pursuant to the Agreement until it was terminated.

5           17.     Defendants terminated the Agreement without cause by providing thirty (30) days'  
6     notice.

7           18.     As a result, Defendants owe Saccani liquidated damages and an amount necessary  
8     to repurchase inventory plus laid in costs as set forth in the Agreement. Saccani is also entitled to  
9     all other damages caused by Defendants' breach.

10          19.     As a proximate result of Defendants' wrongful conduct as alleged herein, Saccani  
11     has suffered and will continue to suffer damages in excess of the minimum jurisdictional amount  
12     of this Court, the exact amount to be determined at trial.

13                                 **SECOND CAUSE OF ACTION**

14                                 **Breach of the Implied Covenant of**  
15                                 **Good Faith and Fair Dealing**  
                                     **(Against All Defendants)**

16          20.     Saccani repeats and realleges the allegations contained in paragraphs 1 through 19  
17     and by reference incorporates the same as though fully set forth herein.

18          21.     The parties entered into the Agreement in 2006. The Agreement sets forth the terms  
19     and conditions expected of Saccani in distributing the Products, including, among other things, the  
20     pricing and payment structure, product quality, and geographic exclusivity terms. The parties  
21     operated pursuant to the Agreement until it was terminated.

22          22.     Defendants breached the covenant of good faith and fair dealing when Defendants  
23     failed to compensate Saccani as a result of the termination by paying liquidated damages and an  
24     amount necessary to repurchase inventory plus laid in costs as set forth in the Agreement.

25          23.     Defendants' conduct unfairly prevented Saccani from receiving the benefits of the  
26     contract.

27          24.     Defendants are liable to Saccani for its damages and losses resulting from  
28     Defendants' breach of good faith and fair dealing.

1           25.     As a proximate result of Defendants' wrongful conduct as alleged herein, Saccani  
2     has suffered and will continue to suffer damages in excess of the minimum jurisdictional amount  
3     of this Court, the exact amount to be determined at trial.

4                                   **THIRD CAUSE OF ACTION**

5                                   **Breach of Implied Contract**  
6                                   **(Against All Defendants)**

7           26.     Saccani repeats and realleges the allegations contained in paragraphs 1 through 25  
8     and by reference incorporates the same as though fully set forth herein.

9           27.     The parties' thirteen-year business relationship was based on the understanding that  
10    Saccani would have exclusive distribution rights as to the Products in eighteen (18) counties in  
11    Northern California and would be compensated for its efforts in the event of a termination in  
12    accordance with the industry standards.

13          28.     Saccani has acted in good faith to fulfill, and has fulfilled, its obligations as  
14    distributor of the Products since 2006. Similarly, Defendants have acted in accordance with such  
15    mutual understanding of Saccani's distribution rights and the termination thereof by, among other  
16    things, operating under the agreed-upon terms for thirteen (13) years and regularly engaging in  
17    discussions regarding sales objectives and further performance by Saccani. An implied contract  
18    exists based on the acts and conduct of the parties, and the surrounding circumstances, including  
19    their agreement regarding price setting, payment structure, product quality, and geographic  
20    exclusivity.

21          29.     Defendants breached the implied contract by terminating Saccani's distribution  
22    rights without paying Saccani liquidated damages and repurchasing inventory plus paying laid in  
23    costs as is customary upon termination of beverage distribution rights.

24          30.     As a proximate result of Defendants' wrongful conduct as alleged herein, Saccani  
25    has suffered and will continue to suffer damages in excess of the minimum jurisdictional amount  
26    of this Court, the exact amount to be determined at trial.

27    ///

28    ///



**FOURTH CAUSE OF ACTION**

**Promissory Estoppel  
(Against All Defendants)**

31. Saccani repeats and realleges the allegations contained in paragraphs 1 through 30 and by reference incorporates the same as though fully set forth herein.

32. Defendants promised to pay liquidated damages and repurchase inventory in the event Saccani's distribution rights were terminated by Defendants without cause. Saccani relied on this promise, which Defendants have failed and refused to perform.

33. Saccani's reliance on Defendants' promise was both reasonable and foreseeable based on industry practice and custom as Saccani exclusively distributed the Products in eighteen (18) counties in Northern California for thirteen (13) years, increasing Defendants' market share in such geographic location. Further, the parties operated under the agreed-upon terms for thirteen (13) years and regularly engaged in discussions regarding sales objectives and further performance.

34. As a result of Saccani's reliance on Defendants' promises, and conduct over the last thirteen years, Saccani has suffered and will continue to suffer damages in excess of the minimum jurisdictional amount of this Court, the exact amount to be determined at trial.

**FIFTH CAUSE OF ACTION**

**Unjust Enrichment  
(Against All Defendants)**

35. Saccani repeats and realleges the allegations contained in paragraphs 1 through 34 and by reference incorporates the same as though fully set forth herein.

36. Saccani has invested its money, time, talent, and efforts into promoting Defendants' products and building Defendants' brand, equity, and goodwill within Saccani's exclusive region over the last thirteen (13) years.

37. Defendants have benefited from this investment and continue to benefit from it, which Saccani would not have made but for the understanding that Saccani was protected against termination by Defendants without the payment of liquidated damages and repurchase of inventory to compensate it for its efforts in increasing the value of Defendants' Products.

38. Defendants have benefited from Saccani's efforts for thirteen years, and now, under new leadership after its recent acquisition refuse to compensate Saccani for such investment.

39. As a result of Defendants' actions, Saccani is entitled to recover amounts by which Defendants have been unjustly enriched. It would be unjust for Defendants to retain the benefits of the investments, efforts and services of Saccani without paying the reasonable value thereof.

40. Saccani is entitled to restitution in an amount equal to the reasonable value of such investment and efforts into promoting Defendants' products and building Defendants' brand, equity, and goodwill within Saccani's exclusive region over the last thirteen (13) years, that amount, which is not less than the liquidated damages plus repurchase of inventory including laid in costs provided in the Agreement and/or is custom in the beverage distribution industry, is to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Saccani prays for judgment against Defendants as follows:

1. For compensatory damages in an amount according to proof;
2. For other economic and consequential damages in an amount to be determined at trial;
3. For liquidated damages;
4. For restitution in an amount according to proof;
5. For pre-judgment interest in an amount according to proof;
6. For reasonable attorneys' fees and costs incurred;
7. For costs of suit; and/or
8. For such other and further relief as the court may deem proper.

DATED:

DELFINO MADDEN O'MALLEY COYLE &  
KOEHLER LLP

By: \_\_\_\_\_

MONICA HANS FOLSOM  
Attorneys for Plaintiff  
SACCANI DISTRIBUTION COMPANY